

COMMISSIONERS  
JEFF HATCH-MILLER - Chairman  
WILLIAM A. MUNDELL  
MARC SPITZER  
MIKE GLEASON  
KRISTIN K. MAYES

OPEN MEETING ITEM  
ORIGINAL



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ARIZONA CORPORATION COMMISSION

DATE: November 16, 2005

DOCKET NO: T-04251A-04-0257

TO ALL PARTIES:

Enclosed please find the recommendation of Administrative Law Judge Yvette Kinsey. The recommendation has been filed in the form of an Opinion and Order on:

COMMPARTNERS, LLC  
(CC&N/FACILITIES-BASED)

Pursuant to A.A.C. R14-3-110(B), you may file exceptions to the recommendation of the Administrative Law Judge by filing an original and thirteen (13) copies of the exceptions with the Commission's Docket Control at the address listed below by **4:00 p.m.** on or before:

NOVEMBER 25, 2005

The enclosed is NOT an order of the Commission, but a recommendation of the Administrative Law Judge to the Commissioners. Consideration of this matter has tentatively been scheduled for the Commission's Open Meeting to be held on:

DECEMBER 6 AND 7, 2005

For more information, you may contact Docket Control at (602)542-3477 or the Hearing Division at (602)542-4250. For information about the Open Meeting, contact the Executive Director's Office at (602) 542-3931.

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BRIAN C. McNEIL  
EXECUTIVE DIRECTOR

1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 COMMISSIONERS

3 JEFF HATCH-MILLER, Chairman  
4 WILLIAM A. MUNDELL  
5 MARC SPITZER  
6 MIKE GLEASON  
7 KRISTIN K. MAYES

8 IN THE MATTER OF THE APPLICATION OF  
9 COMMPARTNERS, LLC FOR A CERTIFICATE  
10 OF CONVENIENCE AND NECESSITY TO  
11 PROVIDE COMPETITIVE FACILITIES-BASED  
12 INTEREXCHANGE AND LOCAL EXCHANGE  
13 TELECOMMUNICATIONS SERVICES IN THE  
14 STATE OF ARIZONA.

DOCKET NO. T-04251A-04-0257

DECISION NO. \_\_\_\_\_

OPINION AND ORDER

10 DATE OF HEARING:

October 13, 2005

11 PLACE OF HEARING:

Phoenix, Arizona

12 ADMINISTRATIVE LAW JUDGE:

Yvette B. Kinsey

13 APPEARANCES:

Kristopher Twomey, on behalf of  
CommPartners, LLC; and

David M. Ronald, Staff Attorney, Legal  
Division, on behalf of the Utilities Division of  
the Arizona Corporation Commission.

17 **BY THE COMMISSION:**

18 On April 5, 2004, CommPartners, LLC ("Applicant" or "CommPartners") submitted to the  
19 Arizona Corporation Commission ("Commission") an application for a Certificate of Convenience  
20 and Necessity ("Certificate") to provide facilities-based long distance and facilities-based local  
21 exchange telecommunications services within the State of Arizona. The application also petitioned  
22 the Commission for a determination that its proposed services should be classified as competitive.

23 On June 14, 2005, the Commission's Utilities Division Staff ("Staff") filed a Staff Report  
24 recommending approval of CommPartners's application subject to certain conditions.

25 On June 22, 2005, by Procedural Order, the matter was set for hearing to commence on  
26 August 11, 2005. The Procedural Order also set forth associated deadlines which ordered Applicant  
27 to publish notice of the hearing by July 11, 2005 and docket its Affidavit of Publication on or before  
28 July 29, 2005.

1 On August 11, 2005, the hearing was called by the Administrative Law Judge. Applicant  
 2 appeared telephonically and Staff appeared and was represented by counsel. At the commencement  
 3 of the hearing, it was noted that notice of the hearing had not been published pursuant to the  
 4 Procedural Order. Accordingly, the matter was continued and the matter was reset for hearing.

5 On August 12, 2005, by Procedural Order, the matter was reset for hearing to commence on  
 6 October 4, 2005.

7 On August 24, 2005, Staff filed a Request to Reschedule Hearing. Staff's request noted that  
 8 Applicant had no objection to the continuance. Therefore, the matter was continued and was reset for  
 9 hearing on October 13, 2005.

10 On September 23, 2005, Applicant published notice of the hearing in the *Arizona Republic*.

11 On October 13, 2005, a full public hearing was conducted before a duly authorized  
 12 Administrative Law Judge. Applicant and Staff appeared through counsel. Both parties presented  
 13 testimony and evidence in the matter. At the conclusion of the hearing, the Administrative Law Judge  
 14 took the matter under advisement and informed the parties that a Recommended Opinion and Order  
 15 would be prepared for the Commissioners' consideration.

16 \* \* \* \* \*

17 Having considered the entire record herein and being fully advised in the premises, the  
 18 Commission finds, concludes, and orders that:

### 19 **FINDINGS OF FACT**

20 1. CommPartners is incorporated under the laws of the State of Nevada and is authorized  
 21 to transact business in Arizona.

22 2. Applicant has the technical and managerial capabilities to provide facilities-based long  
 23 distance and facilities-based local telecommunications services.

24 3. According to Staff's Report, CommPartners provided an unaudited balance sheet for  
 25 its parent company, CommPartners Holding Corporation, for a 12 month time period ending  
 26 December 31, 2004, which list assets of \$13,610,831 and equity of \$11,984,946.  
 27

28 4. Staff's Report stated that CommPartners' original tariff showed that it collects

1 advances, deposits and/or prepayments from its customers.

2 5. Staff also recommends that proof of the performance bond be docketed within 365  
3 days of the effective date of an Order in this matter or 30 days prior to the commencement of service,  
4 whichever comes first and that the performance bond must remain in effect until further Order of the  
5 Commission.

6 6. Applicant will be providing service in an area where an incumbent local exchange  
7 carrier ("ILEC"), along with various competitive local exchange carriers ("CLECs") and  
8 interexchange carriers are providing service.  
9

10 7. It is appropriate to classify all of Applicant's authorized services as competitive.

11 8. Staff believes CommPartners has no market power and the reasonableness of its rates  
12 will be evaluated in a market with numerous competitors. In light of the competitive market in which  
13 Applicant will be providing services, Staff believes that the rates in Applicant's proposed tariffs for  
14 its interexchange and local exchange services are just and reasonable, and recommends the  
15 Commission approve them.  
16

17 9. Staff's Report stated that Consumer Services showed no complaints filed against the  
18 Applicant.

19 10. Staff recommends that CommPartners' application for a Certificate to provide  
20 intrastate telecommunications services be granted subject to the following conditions:

21 (a) that CommPartners, unless it provides services solely through the use of its  
22 own facilities, should procure an Interconnection Agreement before being  
23 allowed to offer local exchange service. The Interconnection Agreement  
24 should be procured within 365 days of the effective date of the Order in this  
25 matter or 30 days prior to the provision of service, whichever comes first, and  
26 must remain in effect until further Order of the Commission. If CommPartners  
provides services solely through the use of its own facilities, no other  
information shall be required once CommPartners informs the Commission of  
that fact by submitting a letter to Docket Control Center under the same  
timeframe and provision of service criteria as stated above;

27 (b) that CommPartners be ordered to file with the Commission, within 365 days of  
28 the effective date of the Order in this matter or 30 days prior to the provision of  
service, whichever comes first, its plan to have its customers' telephone

1 numbers included in the incumbent's Directories and Directory Assistance  
2 databases;

- 3 (c) that CommPartners be ordered to pursue permanent number portability  
4 arrangements with other LECs pursuant to Commission rules, federal laws and  
5 federal rules;
- 6 (d) that CommPartners be ordered to abide by and participate in the AUSF  
7 mechanism instituted in Decision No. 59623, dated April 24, 1996 (Docket  
8 No. RT-00000E-95-0498);
- 9 (e) that CommPartners be ordered to abide by the quality of service standards that  
10 were approved by the Commission for Qwest in Docket No. T-0151B-93-  
11 0183;
- 12 (f) that in areas where it is the sole provider of local exchange service facilities,  
13 CommPartners be ordered to provide customers with access to alternative  
14 providers of service pursuant to the provisions of Commission rules, federal  
15 laws and federal rules;
- 16 (g) that CommPartners be ordered to certify, through the 911 service provider in  
17 the area in which it intends to provide service, that all issues associated with  
18 the provision of 911 service have been resolved with the emergency service  
19 providers within 365 days of an Order in this matter or 30 days prior to the  
20 provision of service, whichever comes first, which certification must remain in  
21 effect until further Order of the Commission;
- 22 (h) that CommPartners be ordered to abide by all the Commission decisions and  
23 policies regarding CLASS services;
- 24 (i) that CommPartners be ordered to provide 2-PIC equal access;
- 25 (j) that CommPartners be required to notify the Commission immediately upon  
26 changes to its name, address or telephone number;
- 27 (k) that CommPartners be ordered to comply with all Commission rules, orders,  
28 and other requirements relevant to the provision of intrastate  
telecommunications service;
- (l) that CommPartners be ordered to maintain its accounts and records as required  
by the Commission;
- (m) that CommPartners be ordered to file with the Commission all financial and  
other reports that the Commission may require, and in a form and at such times  
as the Commission may designate;
- (n) that CommPartners be ordered to maintain on file with the Commission all  
current tariffs and rates, and any service standards that the Commission may  
require;
- (o) that CommPartners be ordered to cooperate with Commission investigations  
including, but not limited to, customer complaints;
- (p) that CommPartners be subject to the Commission's rules governing  
interconnection and unbundling and the 1996 Telecommunications Act and the  
rules promulgated thereunder. In the event that CommPartners provides

essential services or facilities that potential competitors need in order to provide their services to these providers on non-discriminatory terms and conditions pursuant to federal laws, federal rules, and state rules; and

- (q) that if CommPartners desires to discontinue service, it should be required to file an application with the Commission pursuant to A.A.C. R14-2-1107. If Applicant fails to meet this requirement it will result in forfeiture of Applicant's performance bond.

14. Staff further recommended that CommPartners' application become null and void without further order of the Commission and no time extensions granted if it does not comply with the following conditions:

- (a) That CommPartners be ordered to file conforming tariffs within 365 days from the date of an Order in this matter or 30 days prior to providing service, whichever occurs first and in accordance with the Decision;

- (b) In order to protect CommPartners' customers:

- (i) CommPartners should be ordered to procure a performance bond equal to \$200,000. The minimum bond amount of \$200,000 should be increased in increments of \$100,000 whenever the total amount of the advances, deposits and prepayments is within \$20,000 of the bond amount.

- (ii) Partners should docket proof of the performance bond within 365 days of the effective date of an Order in this matter or 30 days prior to the provision of service, whichever comes first, and must remain in effect until further Order of the Commission.

15. At the hearing, CommPartners agreed to provide its services in accordance with Staff's recommendations.

16. In its Staff Report, Staff stated that based on information obtained from the Applicant, it has determined that CommPartners' fair value rate base is zero, and is too small to be useful in setting rates. Staff further stated that in general, rates for competitive services are not set according to rate of return regulation, but are heavily influenced by the market. Staff recommended that while it considered the fair value rate base information, the fair value information provided by the company should not be given substantial weight in this analysis.

17. The rates to be ultimately charged by CommPartners will be heavily influenced by the market.

18. Staff stated that CommPartners lacks the market power to adversely affect the local exchange or interexchange service markets. Therefore, Staff recommended that CommPartners' proposed services be classified as competitive.

19. Staff's recommendations, as set forth herein, are reasonable.

20. CommPartners' fair value rate base is determined to be zero for purposes of this proceeding.

## CONCLUSIONS OF LAW

1. Applicant is a public service corporation within the meaning of Article XV of the Arizona Constitution and A.R.S. §§ 40-281 and 40-282.

2. The Commission has jurisdiction over Applicant and the subject matter of the application.

3. Notice of the application was given in accordance with the law.

4. A.R.S. § 40-282 allows a telecommunications company to file an application for a Certificate to provide competitive telecommunications services.

5. Pursuant to Article XV of the Arizona Constitution, as well as the Arizona Revised Statutes, it is in the public interest for Applicant to provide the telecommunications services set forth in its application.

6. Applicant is a fit and proper entity to receive a Certificate authorizing it to provide competitive facilities-based local exchange and long distance telecommunications services in Arizona as conditioned by Staff's recommendations.

7. The telecommunications services that the Applicant intends to provide are competitive within Arizona.

8. Pursuant to Article XV of the Arizona Constitution as well as the Competitive Rules, it is just and reasonable and in the public interest for Applicant to establish rates and charges that are not less than the Applicant's total service long-run incremental costs of providing the competitive services approved herein.

9. Staff's recommendations, as set forth herein, are reasonable and should be adopted.

1           10.     CommPartners' competitive rates, as set forth in its proposed tariffs, are just and  
2 reasonable and should be approved.

3                                 **ORDER**

4           IT IS THEREFORE ORDERED that the application of CommPartners, LLC for a Certificate  
5 of Convenience and Necessity for authority to provide competitive facilities-based local exchange  
6 and long distance telecommunications services in Arizona shall be, and is hereby, granted,  
7 conditioned upon CommPartners', LLC timely compliance with the following two Ordering  
8 Paragraphs.

9           IT IS FURTHER ORDERED that CommPartners, LLC shall file conforming tariffs in  
10 accordance with this Decision within 365 days of this Decision or 30 days prior to providing service,  
11 whichever comes first.

12           IT IS FURTHER ORDERED that CommPartners, LLC shall procure a performance bond  
13 equal to \$200,000 the earlier of 365 days from the effective date of this Order or 30 days prior to the  
14 commencement of service, and as a compliance item in this docket, file with Docket Control proof of  
15 the performance bond under the same timeframe and provision of criteria as stated above.

16           IT IS FURTHER ORDERED that if CommPartner, LLC fails to meet the timeframes outlined  
17 in the Ordering Paragraphs above, that the Certificate of Convenience and Necessity conditionally  
18 granted herein shall become null and void.

19           IT IS FURTHER ORDERED that if CommPartners, LLC fails to notify each of its customers  
20 and the Commission at least 60 days prior to filing an application to discontinue service pursuant to  
21 A.A.C. R14-2-1107, that in addition to voidance of its Certificate of Convenience and Necessity,  
22 CommPartners, LLC performance bond shall be forfeited.

23 ...

24 ...

25 ...

26 ...

27 ...

28 ...



1 IT IS FURTHER ORDERED that CommPartners, LLC shall comply with all of the Staff  
2 recommendations set forth in the above-stated Findings of Fact and Conclusions of Law.

3 IT IS FURTHER ORDERED that this Decision shall become effective immediately.

4 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

5  
6  
7 CHAIRMAN

COMMISSIONER

8  
9  
10 COMMISSIONER

COMMISSIONER

COMMISSIONER

11  
12 IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive  
13 Director of the Arizona Corporation Commission, have  
14 hereunto set my hand and caused the official seal of the  
Commission to be affixed at the Capitol, in the City of Phoenix,  
this \_\_\_\_ day of \_\_\_\_, 2005.

15  
16 BRIAN C. McNEIL  
17 EXECUTIVE DIRECTOR

18 DISSENT \_\_\_\_\_

19  
20 DISSENT \_\_\_\_\_

21 YBK:mj

1 SERVICE LIST FOR: COMMPARTNERS, LLC

2 DOCKET NO.: T-04251A-04-0257

3  
4 Kristopher Twomey  
5 1519 East 14<sup>th</sup> Street, Suite A  
6 San Leandro, California 94577

7 Christopher Kempley, Chief Counsel  
8 Legal Division  
9 ARIZONA CORPORATION COMMISSION  
10 1200 West Washington Street  
11 Phoenix, Arizona 85007

12 Ernest Johnson, Director  
13 Utilities Division  
14 ARIZONA CORPORATION COMMISSION  
15 1200 West Washington Street  
16 Phoenix, Arizona 85007  
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